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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/423,207    11/03/99    ANDERSSON    T    027650-836

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EXAMINER

PATTERSON, M

ART UNIT

PAPER NUMBER

1772

*8*

DATE MAILED:

07/31/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/423,207

Applicant(s)

ANDERSSON ET AL.

Examiner

Marc A Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 5/23/01.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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## DETAILED ACTION

### NEW REJECTIONS

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. The terms 'rigid' and 'soft' in Claim 1 are relative terms which render the claim indefinite. The terms are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degrees, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

### WITHDRAWN REJECTIONS

3. The 35 U.S.C 112, second paragraph rejection of claim 1, of record in the previous Action, is withdrawn

### REPEATED REJECTIONS

4. The 35 U.S.C. 103(a) rejection of Claims 1 – 4 as being unpatentable over German Patent No. 19511611 in view of Nakagawa et al (U.S. Patent No. 4,907,957), of record in the previous Action, is repeated.

### ANSWERS TO APPLICANT'S ARGUMENTS

5. Applicant's arguments regarding the 35 U.S.C. 103(a) rejection of Claims 1 – 4 as being unpatentable over German Patent No. 19511611 in view of Nakagawa et al. have been carefully considered but have not been found to be persuasive for the reasons set forth below.

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Applicant argues, on page 4 of Paper No. 8, that the present invention is produced by a combined extrusion or blow molding process, and that the invention also relates to an extrusion / blow molding process. The process is important to the invention, Applicant argues, because some of the advantages associated with the process include the production of extruded / blow molded bottles of plastic having greatly reduced weight and superior mechanical strength and rigidity. The process itself is not claimed, however, so that is not considered to be part of the invention; it is therefore not necessary for the a prior art bottle to meet these limitations in order to form a basis for a rejection of Claims 1 – 4.

Applicant also argues, on page 5, that the rejection is improper because the combination of German Patent No. 19511611 and Nakagawa does not suggest a foamed intermediate layer. However, as stated in the previous Action, German Patent No. 19511611 clearly discloses a bottle having three layers; the inner layer is of foamed plastic, and the outer layers are of plastic which is not foamed (Abstract). Nakagawa also teaches a bottle having a foamed intermediate layer (column 5, lines 27 – 51). The combination of German Patent No. 19511611 and Nakagawa therefore also teaches a bottle having a foamed intermediate layer.

Applicant also argues on page 5 that the rejection is improper because the combination of German Patent No. 19511611 and Nakagawa does not suggest a foamed intermediate layer which comprises wherein the layer is a mixture of a rigid polymer component and ductile polymer component. The terms ‘rigid’ and ‘soft’ are relative terms, however which make the claim indefinite. The new 35 U.S.C. 112, second paragraph rejection of Claims 1 – 4 above is directed to amended Claims 1 – 4.

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Applicant also argues on page 6 that no prima facie case of obviousness is present because the intermediate layer which is disclosed by German Patent No. 19511611 and the intermediate layer which is disclosed by Nakagawa each comprise only one layer and both inventions fail to suggest a second layer. Thus, Applicant argues, even if the combined in the manner suggested by the Examiner, one would not arrive at the claimed invention. However, as stated in the previous Action, the intermediate layer which is disclosed by German Patent No. 19511611 comprises high density polyethylene; the intermediate layer which is disclosed by Nakagawa comprises low density polyethylene. If combined by one of ordinary skill in the art, one would therefore arrive at the claimed invention, which comprises in intermediate layer comprising two components, low and high density polyethylene.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


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***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-2364. FAX communications should be sent to (703) 305-3599. FAXs received after 4 P.M. will not be processed until the following business day.

M.A.P.

*m.a.p.*

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
*1779*

*7/30/01*